IN THE HIGH COURT OF UTTARANCHAL AT NAINIAL

Chapter VIII, Rule 32 (2) (b)
Description of Case

Date of decision: 06.11.2006

Criminal Misc Appl. No. 740 OF 2005

Yogendra Nath Arora
S/o Shri Ishwar Das
R/o 1112 Ratan Lal Nagar
Kanpur

..... Applicant

Versus

The State of Uttaranchal .....Respondent.

Shri B.S. Parihar, learned counsel for the applicant.
Shri A. Rab, learned A.G.A. for State.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Dated: 06.11.2006

None: Bench Reader will attach this at the top of first of the judgment when it is put up before the Judge for signature.

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Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the parties.

2. By means of this petition, moved under Section 482 Code of Criminal Procedure, 1973, the petitioner has challenged his prosecution in criminal case No. 14 of 2004, State of Uttaranchal Vs. Yogendra Nath Arora, pending in the court of Special Judge, Anti Corruption, Nainital.

3. Brief facts of the case, as narrated in the petition are that the petitioner is a public servant and aforesaid criminal case is pending before Special Judge, Anti Corruption, Nainital relating to offence punishable under Section 7 read with Section 13 (1) (b) and Section 13(2) of Prevention of Corruption Act, 1988 (for brevity herein after referred as P.C. Act). The grounds on which the prosecution is challenged by the petitioner is that prosecution is being proceeded without lawful sanction of a complete authority. The petitioner was employed

as Deputy General Manager with a Corporation known as UPICO, an undertaking of the Government of U.P. It is only after the creation of State of Uttaranchal that the Uttaranchal Government proposed to take services of the petitioner on deputation with its undertaking- State Industrial Development Corporation (popularly known as SIDCUL). On the request of Government of Uttaranchal, UPICO relieved the petitioner to provide services of the petitioner on deputation with SIDCUL in compliance of which petitioner joined his duties as Deputy General Manager in SIDCUL on 23.01.2003. The petitioner has further stated in the petition that after the period of deputation expired on 30.06.2004, the petitioner was repatriated to his parent department i.e. UPICO. It appears that a crime NO. 168 of 2004 with police station Dalanwala, District Dehradun, was registered against the accused by Vigilance Inspector, relating to offence punishable under Section 7 read with Section 13(1) (b) and 13(2) of the P.C. Act. After investigation, charge sheet was filed in respect of said crime and the impugned criminal case is the result of said investigation.

4. The respondent's reply to the petition is that sanction was obtained from the State of Uttaranchal to prosecute the petitioner. In substance, in the counter affidavit, contents of the petition are admitted that the petitioner's services were obtained from UPICO to SIDCUL. It is also not denied that

he has been repatriated back to his parent department. What has been stated in para-17 of the counter affidavit is that the State of Uttaranchal is taking remedial measures by writing to the State of Uttar Pradesh for granting sanction to prosecute the petitioner.

5. Before further discussions, it is pertinent to mention here that SIDCUL is an Authority created under Section 3 of U.P. Industrial Area Development Act, 1976 (applicable to Uttaranchal). The said authority know as SIDCUL was created after creation of State of Uttaranchal.

6. It is also pertinent to mention here that expression 'public servant' is defined in Clause (c) of Section 2 of P.C. Act, which provides as under-

"(c)'public servant' means,-

……..

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

……..

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

……..

Explanation 1- Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not."

The aforesaid provision read with relevant provision under U.P. Industrial Area Development Act, 1976, makes it amply clear that the petitioner is a public savant. Now, the question is who is the competent authority, who can grant sanction to prosecute the petitioner. Admittedly, the petitioner was an employee of UPICO, an undertaking of Government of Uttar Pradesh. It is also not denied that after the period of expiry of deputation, the petitioner has been repatriated back to his parent department.

7. In the circumstances, this Court has no hesitation in holding that only the competent authority, who can remove the petitioner from his office has the power to grant the necessary sanction. In this connection, at this stage, it is pertinent to mention Clause (c) of Sub-section (1) of Section 19 of P.C. Act, which reads as under:-

"19. Previous sanction necessary for prosecution-

(1) No court shall take cognizance of an offence punishable under Section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,

(a)……

(b)……

(c) in the case of any other person, of the authority competent to remove him from his office."

8. It is needless to say that the objection relating to sanction has already been taken at the earliest stage, that is, at the time of framing of charge, as is clear from the impugned order. In the circumstances, keeping in view the principle of law laid down in Manoranjan Prasad Choudhary Vs. State of Bihar 2004 Supreme Court Cases (Cri) 1213, without sanction of the competent authority, the petitioner, a public servant cannot be prosecuted in respect of he offence punishable under Section 7 read with Section 13(1) (b) and 1392) of the P.C. Act.

9. For the reasons, as discussed above, the petition under Section 482 Cr. P.C. is allowed. The impugned prosecution of the petitioner, in criminal case No. 14 of 2004, being without valid sanction is quashed with the observation that the respondent shall be at liberty to prosecute the petitioner after obtaining valid sanction from the competent authority.

(Prafulla C. Pant, J.)

Dt. 06.11.2006
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